



To the Honorable Council
City of Norfolk, Virginia


February 25, 2020

From: Stephen Kirkland
Executive Director, Nauticus

Subject: Cruise Ship Operating Agreement -
Carnival License Holdings Limited

Reviewed: 
James A. Rogers, Deputy City Manager

Ward/Superward: 2/6

Approved: 
Dr. Larry H. Filer II, City Manager

Item Number: R-7

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance approving a cruise ship operating agreement between the City of Norfolk and Carnival Cruise Line and authorizing the City Manager to execute the agreement on behalf of the City of Norfolk.

IV. **Analysis:**

- Carnival desires to enter into a 5-year agreement with the City of Norfolk (with three, 1-year options)
- Carnival desires to bring a very large, Dream-class ship to Norfolk
- Carnival desires to commit an annual revenue guarantee of \$350K (2021-2025)
- To accommodate this ship (and other larger ships with other cruise lines), the City of Norfolk must invest in a new passenger boarding bridge (cost estimate: \$3.93M - \$4.72M); its current PBB is reaching the end of its life cycle

V. **Financial Impact:**

The City of Norfolk would be responsible for the estimated \$3.93M - \$4.72M passenger boarding bridge (gangway). Cruise revenues will be used to offset this investment. Based on Carnival's 2021 schedule alone (excluding all other cruise line vessels in 2021), the City of Norfolk is expected to net \$960,000.

VI. Environmental:

No impact.

VII. Community Outreach/Notification:

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action:

N/A

IX. Coordination/Outreach:

This letter and ordinance have been coordinated with Nauticus.

Supporting Material:

- EXHIBIT A-Carnival Agreement.Feb14.City Revisions-2-18-20 (PDF)

Form and Correctness Approved: **BAP**



By: _____
Office of the City Attorney

Contents Approved:

Stephen Kirkland

By: _____
DEPT. Nauticus

NORFOLK, VIRGINIA

AN ORDINANCE APPROVING A CRUISE SHIP OPERATING AGREEMENT BY AND BETWEEN THE CITY OF NORFOLK AND CARNIVAL LICENSE HOLDINGS LIMITED, D/B/A CARNIVAL CRUISE LINE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CRUISE SHIP OPERATING AGREEMENT ON BEHALF OF THE CITY OF NORFOLK.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That, subject to appropriation by the City Council of the City of Norfolk, the Cruise Ship Operating Agreement between the City of Norfolk and Carnival License Holdings Limited, d/b/a Carnival Cruise Line, a copy of which is attached hereto as Exhibit A, is hereby approved.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Cruise Ship Operating Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Cruise Ship Operating Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.

Attachments: Exhibit A - Cruise Ship Operating Agreement (15 pages)

CRUISE SHIP OPERATING AGREEMENT

THIS CRUISE SHIP OPERATING AGREEMENT (“**Agreement**”) is dated _____, 2020 (the “**Effective Date**”), by and between the **City of Norfolk** (“**Norfolk**” or the “**City**”, a municipal corporation of the Commonwealth of Virginia and **Carnival License Holdings Limited, d/b/a Carnival Cruise Line**, a division of **Carnival Corporation** (“**Carnival**”), a Panamanian entity. Norfolk and Carnival shall each be hereinafter referred to as a “**Party**” and together, as the “**Parties**”.

WITNESSETH:

WHEREAS, Norfolk operates the Decker Half Moone Cruise Center, which includes a cruise terminal (the “**Terminal**”).

WHEREAS, Carnival desires to deploy the Dream-class cruise vessels (the “**Dream Class Vessel**”) from the Terminal, for which it requires improvements to the Terminal.

WHEREAS, the City desires to undertake and complete, at its sole risk, cost and expense the requisite guest logistics and maritime improvements to the Terminal that are required to safely and efficiently operate a Dream Class Vessel, which such improvements are subject to Carnival approval, each as more fully described herein.

WHEREAS, Carnival, in exchange for the berthing preference rights at the Terminal, will provide the Annual Revenue Guarantee for the Contract Years, as more fully described herein.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1: TERM

1.1 Term. The term of this Agreement shall commence on the Effective Date and terminate on May 15, 2026 (“**Initial Term**”), provided that Carnival may extend the Initial Term of this Agreement for three (3) additional one year (1) year periods (each an “**Option Term**” or “**Option Year**”, together with the Initial Term, the “**Term**”), upon providing the City with written notice of its election no later than six (6) months prior to each expiration date.

ARTICLE 2: REQUIRED IMPROVEMENTS AND OPERATIONAL SERVICES

2.1 Required Improvements. Subject to appropriation of funds by the City Council of the City of Norfolk, the City shall, no later than May 16, 2021 (the “**Completion Date**”), undertake and complete those guest logistics and maritime improvements required to operate and otherwise accommodate the Vessels at the Terminal, as set forth in **Exhibit I**, hereto (the “**Required Improvements**”), in accordance with the plans approved in writing by Carnival, such approval not to be unreasonably withheld, conditioned or delayed. To the extent reasonably possible, Carnival shall expedite the review and approval so as to

facilitate the Improvements schedule provided for herein.

2.1.1 For the avoidance of any doubt, subject to appropriation by the City Council of the City of Norfolk, the City shall be responsible for and bear all risks and any and all fees, costs and expenses relating to and arising out of the Required Improvements.

2.1.2 Notwithstanding Carnival's rights under Section 8.2, the City shall provide an adequate offsite check-in location for Carnival passengers and transportation of passengers and their luggage to and from such offsite location, with adequate security screening, until such time that the Required Improvements are complete and at all times that the Required Improvements, or access thereto, are not available to Carnival passengers, during the Term.

ARTICLE 3: PREFERENTIAL BERTHING PRIVILEGES

3.1 Preferential Berth Privileges. As consideration for Carnival's Annual Revenue Guarantee set forth in Section 4.2, the City agrees to grant preferential berth privileges at the Terminal (along with the adjacent berth, apron, and wharf area) during the Term for Carnival Vessels during twenty-four (24) hour periods commencing at 0001 hours to 2400 hours on days during which Carnival Vessels are scheduled for the purpose of embarking and/or disembarking passengers and/or to conduct transit or to otherwise undertake its cruise operations, which preferential rights shall be exercised in accordance with the procedures set forth below ("**Preferential Berth Privileges**"). The City agrees to grant Preferential Berth Privileges at the Terminal as set forth in the Carnival Schedules (defined below) from the Effective Date through the end of the Term, all in accordance with the procedures set forth below:

3.1.1. Cruise Schedule. On an annual basis, Carnival shall submit to the City, its schedule ("**Carnival Schedule**") making berthing reservations for the cruise season commencing eighteen (18) months from such date for Carnival cruises originating from or calling at the Terminal and the days of planned utilization by Carnival. The berth schedule shall include the dates and time when Carnival Vessels will use the Terminal and the brand/owner and passenger capacity of each Carnival Vessel during the Term. The City shall make the Terminal available to Carnival seven (7) days a week for the berthing of Carnival Vessels at the times and the dates indicated in the Carnival Schedule, provided, however, the City shall provide Carnival with any blackout dates already reserved within thirty (30) days after the Effective Date of this Agreement and Carnival shall not be permitted to reserve those dates.

3.1.2. Each Carnival Schedule shall include the dates and times in which Carnival intends to berth Carnival Vessels and the size and passenger capacity of each Vessel. The City agrees to make the Terminal exclusively available to Carnival for the berthing of the Carnival Vessels during all such

dates and times reflected in the Carnival Schedule.

3.1.3. The City may only accept ships of other cruise lines at the Terminal during the time period covered by the then current Carnival Schedule (but not beyond such period) as long as doing so does not conflict with the Carnival Schedule. Carnival may substitute the actual Vessels that call on the dates in the Carnival Schedules.

3.1.4. From time to time by notice to City, Carnival may propose, pursuant to a subsequent Carnival Schedule or otherwise, to amend a prior Carnival Schedule by adding or removing Carnival Vessels. In such event, so long as another cruise line has not already reserved the requested Berth for the specified date(s), then Carnival will have the right and preference to berth the Carnival Vessel(s) at the Terminal on the requested date(s) and time(s); The City must confirm berth availability within five (5) business days of receipt of notice from Carnival.

ARTICLE 4: ANNUAL REVENUE GUARANTEE

4.1 Norfolk Tariff Charges. Upon the Completion Date, Carnival agrees to pay to Norfolk any and all tariff charges (“PTC”) for each manifested revenue passenger movement (a “passenger movement” shall refer to each in-transit, embarkation and disembarkation of a Carnival guest on a Vessel at the Terminal) on a Carnival Vessel which makes a call at the Terminal during the Term of this Agreement. For purposes hereof, the term “Carnival Vessel” shall mean and include any passenger cruise ship owned or operated by Carnival Corporation, Carnival plc or any of their affiliated cruise operating brands including Carnival Cruise Line.

4.2 Annual Revenue Guarantee. Carnival hereby grants an Annual Revenue Guarantee (hereinafter “**ARG**”) to the City, derived from the PTC payments commencing on May 16, 2021, and in accordance with the table below. The total revenue received by Norfolk from any Carnival vessel call each calendar year (“**Contract Year**”) from the PTC shall be applied against the ARG for such year.

<u>Term</u>	<u>Contract Year</u>	<u>Annual Revenue Guarantee</u>
1	2021 (May 16, 2021 through May 15, 2022)	\$350,000
2	2022 (May 16, 2022 through May 15, 2023)	\$350,000
3	2023 (May 16, 2023 through May 15, 2024)	\$350,000
4	2024 (May 16, 2024 through May 15, 2025)	\$350,000
5	2025 (May 16, 2025 through May 15, 2026)	\$350,000
Option Year 1	2026 (May 16, 2026 through May 15, 2027)	\$350,000
Option Year 2	2027 (May 16, 2027 through May 15, 2028)	\$350,000
Option Year 3	2028 (May 16, 2028 through May 15, 2029)	\$350,000

All Carnival Vessels that call at the Terminal during a Contract Year of the Term of this Agreement shall count towards meeting the ARG for such Contract Year.

4.3 Passenger Service Charge Differential Notice. Within sixty (60) calendar days following the end of each Contract Year, the City shall calculate the actual PTC paid by Carnival based on the passenger manifests submitted by Carnival, and shall send a written notice (the “**Differential Notice**”) to Carnival setting forth the difference (positive or negative) between the PTC paid and the ARG for such Contract Year (the “**Differential**”). If the Differential for any Contract Year is a negative amount (a “**Shortfall Amount**”) or a positive amount (a “**Surplus**”), the Differential Notice shall confirm the Shortfall Amount or Surplus to Carnival. Subject to the terms below, if the Differential Notice for a Contract Year reflects a Shortfall Amount, Carnival shall pay to the City, within sixty (60) calendar days of receipt of such notice the Shortfall Amount, subject to Carnival’s right to credits from the Reconciliation Account (defined below) as hereinafter provided. If the Differential for any Contract Year is a Surplus, then no shortfall payment shall be due from Carnival for such Contract Year and the City shall allocate the Surplus to an account (the “**Reconciliation Account**”) held by the City to be used solely for the purposes described herein. Such Surplus shall be carried forward to future Contract Years, subject to the terms outlined herein, as a credit against any Shortfalls for future Contract Years such that any future Shortfall shall first be credited against the amounts of any existing Surplus in the Reconciliation Account prior to any payment by Carnival hereunder.

4.3.1 For the avoidance of doubt, a Surplus in the Reconciliation Account shall apply and be used as a credit against a Shortfall Amount during the Term of this Agreement, inclusive of extensions, if exercised. To the extent funds in the Reconciliation Account are used during the Term as credits against Shortfall Amounts as hereinabove provided, then any future Surplus shall be used to replenish the Reconciliation Account. If the Reconciliation Account contains unused Surplus funds at the end of the Term of this Agreement, the City shall be entitled to retain all such funds. 4.3.2 Notwithstanding anything to the contrary herein, the payment by Carnival to the City of the Shortfall Amount as to any Contract Year shall represent the sole and exclusive liability of Carnival for failing to reach the ARG for such Contract Year and the fact that there exists a Shortfall shall not, in itself, constitute an event of default under the Agreement.

4.4 Force Majeure. If Carnival does not meet its ARG due to a Force Majeure Event, as defined in Section 11.8, then this Agreement will be modified to reduce the ARG by an amount equal to the calls missed due to the Force Majeure Event. Carnival shall notify Norfolk within thirty (30) calendar days in writing of any Force Majeure Event. If any Force Majeure Event occurs for a period of ninety (90) consecutive days, and Carnival is unable to utilize the Terminal, either Party may terminate this Agreement without further liability by providing written notice to the other party within ten (10) business days of the expiration of the 90-day period.

4.5 Vessel Calls. If Carnival or a Carnival affiliate places another Carnival Vessel in service

in the Terminal for home-port operations or transit calls, that Carnival Vessel shall also be credited toward Carnival's ARG.

4.6 Impositions. If any new (or increase) Imposition, as defined below, is enacted which, in Carnival's opinion, reasonably exercised, could have a material adverse effect (\$500,000 or greater) on Carnival (the "**Adverse Imposition**") and such effect could be avoided or reduced, in whole or in part, by calling at another port, Carnival shall have the right to terminate this Agreement without liability upon no less than thirty (30) days' written notice to the City (the "**Adverse Termination**"). Written notice of the Adverse Termination shall be delivered by to the City within one hundred eighty (180) calendar days after Carnival's actual knowledge of the occurrence of an Adverse Imposition. The term "Impositions" means all taxes, assessments, use and occupancy taxes, excises, levies, license and sales and permit fees and taxes, and other charges by any public authority, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed, or imposed by any public authority upon, or which accrue or become due or payable out of or on account of, Carnival's berthing at the Terminals, or any part thereof, the appurtenances thereto, or the sidewalks, streets, or other public ways adjacent thereto, for any use or occupation of the berths or the terminals, and such franchises, licenses and permits as may be appurtenant to the use of the City of Norfolk port (or any increases in such Impositions).

ARTICLE 5: TERMINAL CONDITIONS AND ACCESS

5.1 Unforeseen Physical Conditions. In the event any unforeseen physical conditions of Terminal facilities arises that would prevent Carnival's scheduled use of the Terminal or other City of Norfolk port facility as scheduled, Norfolk will, to the extent permitted by applicable law, indemnify and pay for any and all miscellaneous or additional charges incurred by Carnival as a result of its use of a substitute berth/terminal and, provided further, that if such condition at the Terminal or other City of Norfolk port facilities which prevent Carnival's scheduled use thereof, is not corrected within sixty (60) days, Carnival may, in its sole discretion, terminate this Agreement, and all obligations hereunder, including with respect to the ARG, without liability to Carnival. In the event of such termination, the minimum guarantees set forth in Section 4.2 shall be prorated and paid to the date of termination. Norfolk shall keep Carnival reasonably informed as to the nature of the unforeseen physical conditions, and provide plans for correcting the unforeseen physical conditions and schedules that define time frames for completing correction or restoration of such facilities. The parties agree that this provision supplements, but does not replace the "Force Majeure" clause in Sections 4.4 and 11.8.

5.2 Carnival's Rights to Use Facilities. Subject to Norfolk's reasonable rules and regulations applicable to all operators at the Terminal, Carnival shall have (i) the right of ingress and egress to and from

the Terminal for its officers, cruise agents, employees, and passengers and those of its principals; (ii) the right to embark and disembark passengers, and to bunker, load, store, and moor Vessels at said berth; and (iii) the right to use all passenger facilities (if any) located at the Terminal, including the use of all passenger waiting rooms, VIP rooms, and other areas reasonably acceptable to Carnival (collectively, “**Passenger Facilities**”), comfort and washroom facilities, and all U.S. Customs and/or Immigration facilities used in connection with the embarking and debarking of passengers and their luggage during such times and durations as its Vessels are within the Terminal.

5.2.1 During such times and durations as its vessels are within the Terminal or otherwise located at the Decker Half Moone Cruise Center, Norfolk will allow Carnival the right to advertise and market its cruise activities within the Passenger Facilities for the convenience of its customers. This “Terminal Branding” will be permitted during scheduled days of Carnival passenger embarkation and debarkation.

5.3 Carnival’s Facility Obligations. Carnival shall comply with applicable state, local, and federal laws in the conduct of its business and shall maintain all licenses and permits necessary to conduct its operations at the Terminal. Carnival shall have no obligation to maintain the Terminal but shall be responsible to Norfolk for any damage to the Terminal directly caused by Carnival, its employees or agents. During scheduled days of Carnival passenger embarkation and debarkation, Carnival shall staff, supervise, and control, by contract or by its own personnel, the embarkation/debarkation and security operation within the restricted area of the Terminal (as depicted in red on the attached Site Plan), in compliance with United States Coast Guard regulations and applicable laws.

5.4 Norfolk’s Facility Obligations. Norfolk shall, at its sole risk and expense, maintain and operate the Terminal and adjacent areas in accordance with current practice and as required by applicable laws. Without limiting the foregoing, Norfolk shall clean and keep in good working order and in a state of good repair and condition all of the port areas, the Terminal, and adjacent wharf/apron areas sufficient to safely and securely accommodate the Vessels, including maintaining in good working order and condition the passenger bridge, the berth and wharf, the means of ingress and egress to and from the berth, all of the facilities, fixtures and furnishings, structural components and equipment used in the Terminal, including all utilities and related equipment, together with the mooring facilities for the Vessels, and shall keep the berth dredged (which shall be done during regularly scheduled dredging events) to a depth to safely accommodate, at all stages of tide, Vessels [having a maximum draft not in excess of 27 feet]. Norfolk shall provide all electricity, water and sewer services to the Terminal and shall provide all janitorial services, in accordance with the current practice, at the Terminal. While performing repairs, refurbishment, or maintenance work on the Terminal, berth, or any other area of the Terminal, Norfolk shall endeavor to minimize the impact of maintenance work on the operation of Vessels in the Terminal area.

5.5 Facility Security. During Vessel call days, Carnival shall provide at its sole risk and expense the security to the inside of the Terminal in compliance with the International Ship and Port Facility Security Code (“ISPS”) and other applicable laws. Norfolk shall provide, at its sole cost and expense, security for the apron, and wharf including ingress and egress to and from the berth and the surrounding port facility, in compliance with ISPS and other applicable laws.

5.6 Other Uses of the Terminal. Subject to Carnival’s berthing schedule at the Terminal, Norfolk shall have the right to allow other vessels to use the Terminal and adjacent berth at any time during which such berth is not otherwise being used by Carnival pursuant to the Carnival schedule, provided, however, such use does not unreasonably interfere with the use of the Terminal and adjacent berth by Carnival in accordance with the Carnival schedule.

ARTICLE 6: NORFOLK TARIFF CHARGES

6.1 Norfolk Tariff Charges. Norfolk shall assess the Dockage, Head Tax, Line Handling, Fresh Water, Equipment and Security charges to Carnival that were in effect as of November 2019 for the duration of the Term (as may be extended), and in no event shall the City increase, amend or otherwise change the charges (or the services provided for such fees) payable by Carnival during the Term of the Agreement. No other charges, fees, rates or tariffs shall be payable by Carnival to the City hereunder for Vessel calls and related operations at the Terminal, for the Term, except for third party services specifically requested by Carnival or a Carnival Affiliate.

6.2 Payments Due. Carnival shall make all undisputed payments of the PTC within thirty (30) days from receipt of each invoice issued by the City to Carnival. The invoices shall be based on the PTC as calculated using the passenger manifests.

ARTICLE 7: INDEMNITY AND INSURANCE

7.1 Indemnity.

7.1.1 To the extent allowed by applicable law without waiving its sovereign immunity, Carnival shall indemnify, protect, defend, and hold harmless Norfolk, its officers, officials, contractors, agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses, and costs of every kind or description to which Norfolk, its officers, agents, or employees, may be subjected by reason of injury to persons including death, loss, or damage to property of any person, firm, or corporation whatsoever (including the parties hereto and their respective officers, agents or employees) in any manner caused by any act or omission of Carnival, Carnival’s employees, officers, or agents, that arises out of Carnival’s cruise operations pursuant to this Agreement, unless

caused by the fault or negligence of Norfolk, or its officers, agents, contractors or employees.. Upon request of Norfolk, Carnival shall undertake to defend, at its sole cost and expense, any and all suits brought against Norfolk in connection with the matters specified herein.

- 7.1.2 Norfolk shall indemnify, protect, defend, and hold harmless Carnival, Carnival operating brands, and their respective officers, agents and employees, from and against all suits, actions, claims, demands, damages, losses, expenses, and costs of every kind or description to which any of them may be subjected by reason of injury to persons including death, loss, or damage to property of any person, firm or corporation whatsoever (including the parties hereto and their respective officers, agents, or employees) in any manner caused by any act or omission of Norfolk, Norfolk's employees, officers, or agents, including, without limitation, anything arising out of the Required Improvements, unless caused by the fault or negligence of Carnival, Carnival's affiliates or their respective officers, agents, or employees,. Upon request of Carnival, Norfolk shall undertake to defend, at its sole cost and expense, any and all suits brought against Norfolk in connection with the matters specified herein.

7.2 Insurance. (a) Carnival shall procure and maintain throughout the Term, at its sole cost and expense, the following insurance policies with not less than the limits specified for each policy:

- (i) Worker's Compensation Insurance for protection from claims under the Virginia Worker's Compensation Law and/or under the Federal Longshoremen's and Harbor Worker's Compensation Act. The Employers' Liability limit under the Worker's Compensation Insurance shall be at least \$1,000,000. Whenever applicable, protection shall also be provided for liability under the Jones Act, 46 U.S.C. Section 688, and under general maritime law.
- (ii) General Liability Insurance for the protection of Carnival against any claims, suits, demands, or judgments by reason of personal injury, including death, and for any claims of damage to property or claims of other damages or losses occurring on or in proximity to the facilities or arising out of or as a result of the use thereof by Carnival. The limit of liability shall be not less than \$5,000,000 per occurrence for bodily injury and \$5,000,000 per occurrence for property damage.
- (iii) Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired motor vehicles of not less than \$1,000,000 for bodily injury and \$1,000,000 for property damage.

ARTICLE 8: DEFAULT AND REMEDIES

8.1 Carnival Default. The following shall constitute Events of Default by Carnival hereunder:

- (i) Non-payment of the undisputed PTC by Carnival when due, and the continuance of such failure for a period of more than sixty (60) days after the City has delivered to Carnival, written notice thereof.
- (ii) Failure by Carnival for any cause or reason, at any time, except as otherwise provided in this Agreement, to perform, observe or comply with material terms of this Agreement and the continuance of such failure for a period of more than thirty (30) days after City has delivered to Carnival written notice thereof, or such longer period not to exceed sixty (60) days if the default cannot reasonably be cured within the thirty (30) day period and Carnival diligently commences to cure the default as soon as possible following notice thereof and thereafter diligently pursues curing the default to completion.
- (iii) Subject to applicable law, appointment of a receiver or liquidator of Carnival, its assets or any part thereof, or if Carnival shall be adjudicated bankrupt or shall be insolvent, or if Carnival shall file a voluntary petition under the Federal Bankruptcy Act or any chapter thereof, or make an assignment for the benefit of creditors or admit in writing its inability to pay its debts generally as they become due.

8.2 Norfolk Default. The following shall constitute Events of Default by Norfolk hereunder:

- (i) Failure by Norfolk for any cause or reason, at any time, except as otherwise provided in this Agreement, to perform, observe or comply with the terms of this Agreement and the continuance of such failure for a period of more than thirty (30) days after Carnival has delivered to Norfolk written notice thereof, or such longer period not to exceed sixty (60) days if the default cannot reasonably be cured within the thirty (30) day period and Norfolk diligently commences to cure the default as soon as possible following notice thereof and thereafter diligently pursues curing the default to completion.
- (ii) Immediately, upon failure by Norfolk to complete the Required Improvements by May 16, 2021.

ARTICLE 10: NOTICE

10.1 Delivery of Notice. All notices required to be given to Norfolk and Carnival hereunder shall be sent by (a) registered or certified mail, whereupon notice shall be deemed to have been given on

the third day after deposit for mailing, or (b) delivery (i.e., courier or other hand delivery), overnight delivery, or electronic mail, whereupon notice shall be deemed to have been given on the day of delivery. If the day of notice is a Saturday, Sunday, or legal holiday, notice shall be deemed to have been given on the first calendar day thereafter which is not a Saturday, Sunday, or legal holiday.

10.2 Notices to Norfolk. All notices required to be given to Norfolk hereunder shall be made to Norfolk at:

City Manager
City of Norfolk
Office of the City Manager
810 Union Street
1101 City Hall Building
Norfolk, VA 23510

with a copy, to:

Nauticus Executive Director
One Waterside Drive
Norfolk, VA 23510

and:

City Attorney
City of Norfolk
Office of the City Attorney
810 Union Street
900 City Hall Building
Norfolk, VA 23510

or to such other address as Norfolk may direct from time to time by written notice forwarded to Carnival as provided above.

9.3 Payment to the City. All payments due to the City hereunder shall be made payable to the City of Norfolk and delivered to Nauticus Executive Director, One Waterside Drive, Norfolk, Virginia 23510.

9.4 Notices to Carnival. All notices required to be given to Carnival hereunder shall be sent to Carnival at:

Terry Thornton
Senior Vice President – Nautical and Port Operations
Carnival Cruise Line
3655 Northwest 87th Avenue

Miami, Florida 33178
E-mail: tthornton@carnival.com

or to such other address or facsimile number as Carnival may direct from time-to-time by written notice forwarded to Norfolk as provided above.

ARTICLE 10: GENERAL

10.1 Complete Agreement. This Agreement contains the complete agreement of the Parties and replaces and supersedes any prior understanding which is of no further force or effect. No waiver of any breach of covenants herein shall be construed as a waiver of the covenant itself or any subsequent breach thereof.

10.2 Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.3 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Norfolk and Carnival.

10.4 Interpretation and Definitions. The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against Norfolk or Carnival. The words "herein," "hereof," "hereunder," and other similar compounds of the word "here," when used in this Agreement shall refer to the entire Agreement and not to any particular provision or article.

10.5 Parties. The neuter gender includes the feminine and masculine, and the singular number includes the plural, and the word "person" includes a corporation, partnership, form or association wherever the context so requires.

10.6 Binding Effect. This Agreement shall bind and inure to the benefit of Norfolk and Carnival, and any such successors or assigns of Norfolk and Carnival (including, as to Norfolk, such third parties) as may succeed by law to the rights, powers and duties of Norfolk, or become in any manner vested with the administration of affairs of Norfolk.

10.7 Virginia Law. This Agreement was entered into in the Commonwealth of Virginia, and the laws of Virginia and any applicable federal law shall govern its interpretation, application, and the rights and obligations of the parties hereunder. Venue shall be in the state courts in the City of Norfolk Virginia.

10.8 Force Majeure. Norfolk and Carnival shall not be liable for any failure delay or interruption in performing their individual obligations hereunder due solely to causes or conditions beyond the control of Norfolk, Carnival, and their agents, employees, divisions and subsidiaries, affiliates, contractors, subcontractors, guests, including, without limitation, acts of God, extreme weather and act of

state or war, public emergency, strikes related to the operation in the Terminal, picketing, boycotts, work stoppages, or labor troubles of any other type (whether affecting Norfolk, Carnival, their divisions, subsidiaries and affiliates) including the negligence or intentional acts of harbor pilots or third parties, with respect to fire or catastrophic events regarding berths, piers, channels, turning basins, terminal buildings, vessel destruction, mechanical problems of a material nature, fire or catastrophic marine casualty, and theft or seizing of the vessels (a “**Force Majeure Event**”), provided that the party claiming the existence of a Force Majeure Event delivers written notice to the other party of such event within fifteen (15) calendar days of the commencement of such event except as set forth in Section 4.4 above. Except as set forth in Sections 4.4 and 5.1 above, the existence of a Force Majeure Event shall not be a cause for termination of this Agreement.

10.9 No Exclusive Remedies. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

10.10 Waiver of Jury Trial. The parties hereby mutually waive any and all rights which either may have to request a jury trial in any action, proceeding or counterclaim (except those involving personal injury or property damage) arising out of this Agreement.

10.11 Authority. Each person executing this Agreement on behalf of his or her respective party to this Agreement represents and warrants: that the said party is duly organized and validly existing; that this Agreement has been authorized by all necessary persons and is validly executed by an authorized officer or agent of the said party; and that this Agreement is binding and enforceable against the said party in accordance with its terms.

10.12 Attorneys’ Fees. In the event of a dispute arising from or relating to the terms of this Agreement the prevailing Party shall be entitled to reimbursement from the non-prevailing Party of its reasonable attorneys' fees and costs.

10.13 Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts together constitute but one Agreement. A photocopy or facsimile reproduction of an original signature of a Party on this Agreement binds that Party to the terms, covenants, and conditions of this Agreement.

10.14 Assignment. This Agreement may not be assigned except to an affiliate of Carnival without the prior written consent of the City.

(Signatures on following page.)

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**CARNIVAL LICENSE HOLDINGS LIMITED,
D/B/A CARNIVAL CRUISE LINE,
a division of Carnival Corporation**

Attest: _____
Name: _____

By: _____
Name:
Title:

CITY OF NORFOLK

Attest:

City Clerk

By: _____
Name: Dr. Larry H. Filer
Title: City Manager

DRAFT

Approved as to form and correctness:

Deputy City Attorney

EXHIBIT I

Required Improvements

1. Install a new guest boarding bridge that will accommodate the Carnival Dream-class ships (Carnival Dream, Carnival Magic and Carnival Breeze).
2. Provide adequate guest transportation between the terminal and parking location.
3. Provide enhanced signage to direct guests to the parking location and terminal.
4. Provide access to the Nauticus Museum for use as a check-in location.
5. Provide a total of 900 seats in the terminal.
6. Replace existing check-in desks with new podiums.
7. Replace existing stanchions and provide additional stanchions for a total of 500 stanchions for use inside and outside of the terminal.
8. Remove train display in the debarkation area.
9. Provide luggage tables in the debarkation area to accommodate additional baggage.
10. Provide three security scanning machines for luggage and provision screening.
11. Provide eight security scanning machines for guests in the terminal.
12. In the event the new boarding bridge is not installed for any scheduled call, an appropriate offsite check-in location will be provided. Transportation for guests and luggage will also be provided between the parking location, offsite check-in location and terminal for guests and luggage. An entry ramp that will connect at dock height will also be provided to enable guest debarkation / embarkation utilizing the existing shipboard crew gangway.